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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140904749-5507-02]

RIN 0648-BE50

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Standardized Bycatch Reporting Methodology Omnibus Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements approved management measures contained in the Standardized Bycatch Reporting Methodology Omnibus Amendment to the fishery management plans of the Greater Atlantic Region, developed and submitted to NMFS by the Mid-Atlantic and New England Fishery Management Councils. This amendment is necessary to respond to a remand by the U.S. District of Columbia Court of Appeals decision concerning observer coverage levels specified by the SBRM and to add various measures to improve and expand on the Standardized Bycatch Reporting Methodology previously in place. The intended effect of this action is to implement the following: A new prioritization process for allocation of observers if agency funding is insufficient to achieve target observer coverage levels; bycatch

reporting and monitoring mechanisms; analytical techniques and allocation of at-sea fisheries observers; a precision-based performance standard for discard estimates; a review and reporting process; framework adjustment and annual specifications provisions; and provisions for industry-funded observers and observer set-aside programs.

DATES: This rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*]. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Copies of the Standardized Bycatch Reporting Methodology (SBRM) Omnibus Amendment, and of the Environmental Assessment (EA), with its associated Finding of No Significant Impact (FONSI) and the Regulatory Impact Review (RIR), are available from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; and from the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The SBRM Omnibus Amendment and EA/FONSI/RIR is also accessible via the Internet at: www.greateratlantic.fisheries.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978-281-9341.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements the SBRM Omnibus Amendment management measures developed and submitted by the New England and Mid-Atlantic Regional Fishery Management Councils, which were approved by NMFS on behalf of the Secretary of Commerce on March 13,

2015. A proposed rule for this action was published on January 21, 2015 (80 FR 2898), with public comments accepted through February 20, 2015.

Section 303(a)(11) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that all Fishery Management Plans (FMPs) “establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.” The purpose of the amendment is to: Address the Appellate Court’s remand by minimizing the discretion allowed in prioritizing allocation of observers when there are insufficient funds; explain the methods and processes by which bycatch is currently monitored and assessed for fisheries in the region; determine whether these methods and processes need to be modified and/or supplemented; establish standards of precision for bycatch estimation for these fisheries; and, thereby, document the SBRM established for all fisheries managed through the FMPs of the Greater Atlantic Region. Extensive background on the development of the SBRM Omnibus Amendment, including the litigation history that precipitated the need for the amendment, is provided in the proposed rule and supporting environmental assessment. For brevity, that information is not repeated here.

As detailed below (in the sections titled Bycatch Reporting and Monitoring Mechanisms and Analytical Techniques and Allocation of At-sea Fisheries Observers), this action incorporates by reference provisions of the SBRM Omnibus Amendment and EA/FONSI/RIR, identified formally as the *Standardized Bycatch Reporting Methodology: An Omnibus Amendment to the Fishery Management Plans of the Mid-Atlantic and New England Regional Fishery Management Councils*, completed March 2015 by the New England Fishery Management Council, Mid-Atlantic Fishery Management Council, National Marine Fisheries Service Greater Atlantic Regional Fisheries Office, and National Marine Fisheries Service

Northeast Fisheries Science Center. To ensure that the public can readily access and understand the provisions that are incorporated by reference, the full SBRM Omnibus Amendment is available online at www.greateratlantic.fisheries.noaa.gov, and from the Greater Atlantic Regional Fisheries Office or either the New England or Mid-Atlantic Fishery Management Councils (see ADDRESSES).

This final rule for the SBRM Omnibus Amendment establishes an SBRM for all FMPs administered by the Greater Atlantic Regional Fisheries Office comprised of seven elements: (1) The methods by which data and information on discards are collected and obtained; (2) the methods by which the data obtained through the mechanisms identified in element 1 are analyzed and utilized to determine the appropriate allocation of at-sea observers; (3) a performance measure by which the effectiveness of the SBRM can be measured, tracked, and utilized to effectively allocate the appropriate number of observer sea days; (4) a process to provide the Councils with periodic reports on discards occurring in fisheries they manage and on the effectiveness of the SBRM; (5) a measure to enable the Councils to make changes to the SBRM through framework adjustments and/or annual specification packages rather than full FMP amendments; (6) a description of sources of available funding for at-sea observers and a formulaic process for prioritizing at-sea observer coverage allocations to match available funding; and (7) measures to implement consistent, cross-cutting observer service provider approval and certification procedures and to enable the Councils to implement either a requirement for industry-funded observers or an observer set-aside program through a framework adjustment rather than an FMP amendment. These measures are described in detail as follows.

Bycatch Reporting and Monitoring Mechanisms

This final rule incorporates by reference the SBRM Omnibus Amendment's use of the status quo methods by which data and information on discards occurring in Greater Atlantic Region fisheries are collected and obtained. The SBRM uses sampling designs developed to minimize bias to the maximum extent practicable. The Northeast Fisheries Observer Program (NEFOP) is the primary mechanism to obtain data on discards in all Greater Atlantic Region commercial fisheries managed under one or more of the regional FMPs. All subject FMPs require vessels permitted to participate in Federal fisheries to carry an at-sea observer upon request. All data obtained by the NEFOP under this SBRM are collected according to the techniques and protocols established and detailed in the Fisheries Observer Program Manual and the Biological Sampling Manual, which are available online (www.nefsc.noaa.gov/fsb/). Data collected by the NEFOP include, but are not limited to, the following items: Vessel name; date/time sailed; date/time landed; steam time; crew size; home port; port landed; dealer name; fishing vessel trip report (FVTR) serial number; gear type(s) used; number/amount of gear; number of hauls; weather; location of each haul (beginning and ending latitude and longitude); species caught; disposition (kept/discarded); reason for discards; and weight of catch. These data are collected on all species of organisms caught by the vessels. This includes species managed under the regional FMPs or afforded protection under the Endangered Species Act or Marine Mammal Protection Act, but also includes species of non-managed fish, invertebrates, and marine plants. The SBRM will incorporate data collection mechanisms implemented by NMFS and affected states as part of the Marine Recreational Information Program (MRIP) for information on recreational fishery discards.

Analytical Techniques and Allocation of At-sea Fisheries Observers

This final rule incorporates by reference the SBRM Omnibus Amendment's use of the existing methods by which the data obtained through the mechanisms included above are analyzed and utilized to determine the appropriate allocation of at-sea observers across the subject fishing modes, including all managed species and all relevant fishing gear types in the Greater Atlantic Region. At-sea fisheries observers will, to the maximum extent possible and subject to available resources, be allocated and assigned to fishing vessels according to the procedures established through the amendment. All appropriate filters identified in the amendment will be applied to the results of the analysis to determine the observer coverage levels needed to achieve the objectives of the SBRM. These filters are designed to aid in establishing observer sea day allocations that are more meaningful and efficient at achieving the overall objectives of the SBRM.

SBRM Performance Standard

This action incorporates by reference the intention of the SBRM Omnibus Amendment to ensure that the data collected under the SBRM are sufficient to produce a coefficient of variation (CV) of the discard estimate of no more than 30 percent. This standard is designed to ensure that the effectiveness of the SBRM can be measured, tracked, and utilized to effectively allocate the appropriate number of observer sea days. Each year, the Regional Administrator and the Science and Research Director will, subject to available funding, allocate at-sea observer coverage to the applicable fisheries of the Greater Atlantic Region sufficient to achieve a level of precision (measured as the CV) no greater than 30 percent for each applicable species and/or species group, subject to the use of the filters noted above.

SBRM Review and Reporting Process

This final rule incorporates by reference the SBRM Omnibus Amendment's requirements for NMFS to prepare an annual report for the Councils on discards occurring in Greater Atlantic Region fisheries, and to work with the Councils to develop a report every 3 years that evaluates the effectiveness of the SBRM. Once each year, the Science and Research Director will present to the Councils a report on catch and discards occurring in fisheries in the Region. Details about the information to be included in the annual discard reports are included in the amendment. The specific elements of the discard report may change over time to adjust to the changing needs of the Councils. Every 3 years, the Regional Administrator and the Science and Research Director will appoint appropriate staff to work with staff appointed by the executive directors of the Councils to obtain and review available data on discards and to prepare a report assessing the effectiveness of the SBRM.

Framework Adjustment and/or Annual Specification Provisions

This rule implements regulations to enable the Councils to make changes to specific elements of the SBRM through framework adjustments and/or annual specification packages rather than full FMP amendments. Framework adjustments and annual specification packages provide for an efficient yet thorough process to modify aspects of the SBRM if a Council determines that a change is needed to address a contemporary management or scientific issue in a particular FMP. Such changes to the SBRM may include modifications to the CV-based performance standard, the means by which discard data are collected/obtained in the fishery, the stratification (modes) used as the basis for SBRM-related analyses, the process for prioritizing observer sea-day allocations, reporting on discards or the performance of the SBRM. Such changes may also include the establishment of a requirement for industry-funded observers and/or observer set-aside provisions.

Prioritization Process

This rule incorporates by reference the SBRM Omnibus Amendment process to identify the funds that will be made available annually for SBRM, and how to prioritize the available observer sea-days if the funding provided to NMFS for such purposes is insufficient to fully implement the SBRM across all fishing modes. This measure is intended to limit the discretion the agency has in determining when funds are insufficient and how to reallocate observers under insufficient funding scenarios to address the concerns raised by the Court of Appeals in *Oceana v. Locke*.¹

Under the new prioritization process, the amount of money available for the SBRM will be the funding allocated to the Region under four specific historically-appropriated observer funding lines (less deductions for management and administrative costs). Of these, the funds made available by Congressional appropriation through the Northeast Fisheries Observers funding line must be dedicated to fund the proposed SBRM. In fiscal years 2011-2014, the Northeast Fisheries Observers funding line made up 53 percent to 59 percent of all observer funds for the Greater Atlantic Region under these four funding lines. Amounts from three of the funding lines are allocated among the fisheries in the five NMFS regions, including the Greater Atlantic Region, to meet national observer program needs. The total amount of the funds allocated for the Greater Atlantic Region from these three funding lines will constitute the remainder of the available SBRM funds. In fiscal year 2014, the amount appropriated under the Northeast Fisheries Observers funding line was \$6.6 million, and another \$5.9 million was made available for fisheries in the Greater Atlantic region under the other three funding lines. Funding in fiscal year 2015 for the Greater Atlantic Region under the other three funding lines is expected to be consistent with past allocations of these funds. Historically, the available funding has been

¹ 670 F. 3d 1238 (D.C. Cir. 2011)

insufficient to fully fund the SBRM to meet the performance standard. If the available funding continues to be insufficient to fully fund the SBRM, the amendment establishes a non-discretionary formulaic processes for prioritizing how the available observer sea-days would be allocated to the various fishing modes to maximize the effectiveness of bycatch reporting and bycatch determinations.

Industry-funded Observers and Observer Set-aside Program Provisions

This final rule implements regulatory changes to establish consistent, cross-cutting observer service provider approval and certification procedures and measures to enable the Councils to implement either a requirement for industry-funded observers and/or an observer set-aside program through a framework adjustment, rather than an FMP amendment.

Corrections and Clarifications

This final rule also makes minor modifications to the regulations under authority granted the Secretary under section 305(d) of the Magnuson-Stevens Act to ensure that FMPs are implemented as intended and consistent with the requirements of the Magnuson-Stevens Act. This action corrects the list of framework provisions under the Atlantic Surfclam and Ocean Quahog FMP at § 648.79(a)(1) to also include, “the overfishing definition (both the threshold and target levels).” This text was inadvertently removed from the regulations by the final rule to implement annual catch limits and accountability measures for fisheries managed by the Mid-Atlantic Fishery Management Council (76 FR 60606, September 29, 2011). The regulations at § 648.11(h)(5)(vii) are revised to remove reference to the requirement that observer service providers must submit raw data within 72 hours. The final rule to implement Framework 19 to the Atlantic Sea Scallop FMP (73 FR 30790, May 29, 2008) incorrectly stated the time an

observer service provider has to provide raw data collected by an observer to NMFS, and this correction better reflects the Council's intent for that action.

This action also implements a consistent deadline for payment of industry-funded observers in the scallop fishery. Previously, there was not a specific due date for payment of industry-funded observers following an observed trip. We are implementing a deadline of 45 days after the end of an observed fishing trip as a due date for payment for all industry-funded observer services rendered in the scallop fishery.

Changes from Proposed Rule

A minor change has been made to the proposed regulatory text. As stated in the proposed rule, this amendment proposed to implement consistent, cross-cutting observer service provider and certification procedures and measures. To do this, several paragraphs within § 648.11(h) were proposed to be revised for consistency and to remove references that were specific to the current industry-funded scallop observer program. However, the specific provision at § 648.11(h)(5)(viii)(A) only applies to the industry-funded scallop observer program, and the reference to scallop vessels in that paragraph should not have been removed. Therefore, this final rule clarifies that this paragraph applies specifically to scallop vessels.

Comments and Responses

A total of 11 individual comment letters with 15 distinct categories of comments were received on the proposed rule and SBRM Omnibus Amendment.

Comment 1: One member of the public expressed general support for the action as an overhaul of bycatch reporting methods.

Response: NMFS appreciates the support for the proposed action, although the comment did not address any specific provision of the SBRM Omnibus Amendment or its proposed rule.

Comment 2: A letter from the Cape Cod Commercial Fishermen's Alliance, an organization representing commercial fishermen, expressed concern with how the SBRM would trigger prioritization when funding is insufficient and the subsequent impact to the Northeast multispecies sector management program, and urged disapproval of the amendment. The group stated that the proposed SBRM is overly complicated and expensive; that it will hinder industry efforts to develop alternative monitoring solutions including electronic monitoring; that it will eliminate supplemental observer coverage on midwater trawl vessels fishing in groundfish closed areas; and that it negatively impacts the groundfish at-sea monitoring program and could put the Northeast multispecies sector system at risk because the system is heavily reliant on appropriate monitoring.

Response: NMFS acknowledges the prioritization process trigger may result in observer funding--previously used by the Agency to discretionarily fund at-sea monitoring, electronic monitoring, and/or supplemental coverage of midwater-trawl vessels--being used exclusively for SBRM if the funding amounts are insufficient to realize the level of coverage estimated to achieve the 30-percent CV performance standard. This is a direct result of efforts to address the specific finding of the U.S. Appeals Court in *Oceana v. Locke* that the Agency had too much discretion to determine the available funding for SBRM. The impacts of this change on other monitoring priorities are real and will require adjusting expectations and evaluating whether other sources of funding for these priorities may be possible. NMFS has developed annual agency-wide guidance regarding how observer funding is allocated across regions to meet SBRM and other observer needs.

The groundfish sector at-sea monitoring program is separate from the SBRM and is specific to the Northeast Multispecies FMP. The at-sea monitoring program provides

supplemental monitoring within this fishery to address specific management objectives of the New England Fishery Management Council. The SBRM Omnibus Amendment does not specifically modify the groundfish sector at-sea monitoring program or its objectives, including the requirement for the groundfish industry to pay for its portion of costs for at-sea monitors if the Federal government does not. The groundfish at-sea monitoring provisions were developed by the Council and have been in place since 2010. To date, we have been able to provide sufficient funding for the groundfish sector at-sea monitoring program such that industry did not have to pay for at-sea monitoring. With the constraints imposed by this final rule, funds previously used to cover groundfish sector at-sea monitoring will now be required to fund SBRM. It may be necessary for the Council to develop alternatives to ensure accountability with sector annual catch entitlements when there are funding shortages that reduce available at-sea monitoring coverage below the rates needed to ensure a CV of 30 percent.

Electronic monitoring has been viewed as one possible means of addressing observer funding shortages. In recent years, NMFS has worked with groundfish sectors to develop and evaluate monitoring alternatives, including electronic monitoring. While electronic monitoring is not currently sufficiently developed or suitable to be a viable replacement for at-sea observers for the purpose of the SBRM for fisheries administered by the Greater Atlantic Regional Fisheries Office, there are circumstances where it may be appropriate to address other monitoring purposes. NMFS is committed to working with our industry partners to continue development and implementation of electronic monitoring to the extent that it meets management objectives and funding is available. The SBRM can be amended at any time in the future to incorporate other monitoring means such as electronic monitoring.

In recent years, the Northeast Multispecies FMP has authorized mid-water trawl vessels to fish in the groundfish closed areas if they carried observers. The SBRM Omnibus Amendment may result in the unavailability of the funds previously used for this coverage because the funds must first go to the SBRM requirements. The requirement for midwater trawl vessels to have an observer to fish in the groundfish closed areas, however, is not changed by this amendment. Accordingly, without funds to provide this supplemental observer coverage, fewer midwater trawl trips will have access to these areas.

Comment 3: Two nongovernmental environmental organizations, Oceana, Inc., and Earthjustice, both stated the amendment uses outdated catch data from 2004 and does not meet various legal requirements.

Response: NMFS disagrees with the commenters' assertion that the amendment uses outdated data. Where new data would not provide additional insight or value in the amendment, the analysis from the 2007 SBRM amendment was maintained. When new data informed decision making in the amendment, NMFS used the most recent data available. Much of the amendment describes a system of statistical calculations that remain valid and appropriate even when newer data are not analyzed to provide context. The descriptions of the fisheries and fishing modes and the analysis of the impacts of alternatives uses catch data from 2012. Other analysis used more recent data. Some analyses in Chapter 5 of the Omnibus Amendment Environmental Assessment are illustrative examples of the sample size analysis used to determine how many observer sea-days are needed to achieve the 30-percent CV performance standard, and the bycatch rate analysis that uses data from observed fishing trips to estimate bycatch across the whole fishery. These analyses are conducted each year with updated data as a part of the SBRM process. The validity of these examples is not dependent on using data from a

specific fishing year. The detailed analysis and description of the process that was conducted and presented in the 2007 SBRM amendment is still valid today. Recreating this work for this specific action would have taken a significant amount of time and effort, but would not have provided any additional insight into the SBRM process. Therefore, updated analysis was conducted and added to the document where needed to reflect the changes in the fisheries since the initial 2007 SBRM amendment was developed and implemented.

Comment 4: Oceana and Earthjustice assert that the action does not contain a sufficient range of reasonable alternatives including a no-action alternative, and that some alternatives were improperly rejected from consideration, including using non-managed species as drivers of observer coverage and use of electronic monitoring as a component of the SBRM. Oceana states the SBRM would have significant impacts and should require a full environmental impact statement (EIS) under the National Environmental Policy Act (NEPA).

Response: NMFS disagrees with the commenters' claim that the amendment does not meet the legal requirements of the NEPA, including that the amendment does not properly address cumulative impacts, does not have an adequate no-action alternative, does not have an adequate range of alternatives, and that it requires an EIS. Consistent with NEPA, Council for Environmental Quality (CEQ) regulations, and NOAA administrative policy, NMFS and the Councils collaborated to prepare an EA to evaluate the significance of the environmental impacts expected as a result of the management measures considered in the SBRM Omnibus Amendment. The results of this assessment are provided in section 8.9.2 of the amendment, which supports the finding of no significant impacts (FONSI) signed by the agency on March 10, 2015. The commenters provide no evidence that the conclusion in the FONSI is not supported by the facts presented in the EA for this finding. NMFS asserts that the EA considers a sufficient

range of alternatives to satisfy the requirements of NEPA. As described throughout the amendment (the Executive Summary, chapters 6, 7, and 8), the alternatives considered by the Councils were structured around seven specific elements that together comprise the Greater Atlantic Region SBRM. Multiple alternatives were developed and considered for each element and, in some cases, various sub-options were also developed and considered. Section 7.3 of the amendment explicitly provides a discussion of the expected cumulative effects associated with this action. NMFS asserts that this treatment of cumulative effects is consistent with CEQ regulations and current NOAA policy.

Oceana presented these same contentions before the Court in its challenge to the 2007 SBRM amendment (*Oceana v. Locke*, 725 F. Supp. 2d 46 (D.D.C. 2010) reversed on other grounds (*Oceana v. Locke*, 670 F. 3d 1238 (D.C.C. 2011)). In that case, the U.S. District Court thoroughly reviewed their arguments and concluded that an EA for the 2007 SBRM amendment was consistent with NEPA. The Court specifically stated that, “NMFS sufficiently considered the issue of cumulative effects and concluded that any potential downstream impacts were not ‘reasonably foreseeable and directly linked’ to the Amendment”² and that “NMFS’ consideration of alternatives in the EA was sufficient to meet the requirements of NEPA”³

While some components of the amendment remain essentially unchanged from the 2007 SBRM amendment, several components, including the affected environment and cumulative impacts analyses have been updated to account for changes since 2007. NMFS asserts that the amendment continues to meet all legal requirements, including NEPA.

NMFS disagrees with the commenters’ assertion that alternatives were improperly listed as considered but rejected. When the Councils initiated this action, they explicitly supported the

² *Oceana v. Locke*, 725 F. Supp. 2d 46 (D.D.C. 2010) at pg 24, reversed on other grounds *Oceana v. Locke*, 670 F. 3d 1238 (D.C.C. 2011)

³ *Id.* At pg 25

previous Council decisions regarding the range of alternatives, including the alternatives considered but rejected. Both Councils directed the plan development team for this action specifically to focus on the legal deficiencies identified by the Court of Appeals and some minor revisions suggested by the 3-year review report. Given the primary scope of this action to specifically focus on the Court's remand, alternatives previously considered but rejected in the 2007 amendment were deemed considered and rejected for this action. Chapter 6.8 of the SBRM Omnibus Amendment reiterates the discussion of why each alternative was considered but rejected in the prior action, and explains how each does not meet the purpose and need of the SBRM Omnibus Amendment. The commenters offer no new information or circumstances that show these alternatives should have not been rejected from further consideration for this action.

Comment 5: Oceana states that the adoption of annual catch limits and associated accountability measures in recent years has significantly changed the data collection needs for management and that the SBRM needs to fully discuss and meet all bycatch monitoring needs of each FMP, including inseason actions. Oceana asserts the annual discard reports described in the SBRM Omnibus Amendment will not provide bycatch data at a level of detail necessary to meet all management priorities of the Councils.

Response: NMFS disagrees with Oceana's claim that the SBRM Omnibus Amendment does not meet the monitoring needs of annual catch limits and accountability measures mandated by the Magnuson-Stevens Act. The Magnuson-Stevens Act requires each Council to develop annual catch limits for each of its managed fisheries. Further guidance on annual catch limit requirements was issued by NMFS in 2009 (74 FR 3178). The SBRM is designed to meet the statutory requirements to establish a mechanism for collecting bycatch information from each fishery and estimating the discards of each species on an annual basis, to effectively monitor

these annual catch limits. The SBRM forms the basis for bycatch monitoring in the Region, but need not address all monitoring requirements of all fishery management plans. Oceana conflates the Magnuson-Stevens Act requirement for annual catch limits (ACLs), which are typically set for the whole stock at an annual level, and assessed after the conclusion of each fishing year, with the Councils' prerogative to manage fisheries using smaller scale requirements such as sub-ACLs for groundfish sector fisheries and other fisheries that may trigger inseason management actions. The specific monitoring requirements of these management programs may be addressed outside of the SBRM with separate observer or monitoring requirements. Most FMPs that use in-season actions to open or close fisheries use landings data to make that determination, and do not rely on near real-time estimates of discards. When the New England Council designed the Northeast multispecies sector program, it recommended NMFS monitor catch, including discards, at the sector level and require measures designed to allow for inseason management actions. To meet this need, the Council created the sector at-sea monitoring program. The sector at-sea monitoring program requires additional monitoring coverage, beyond SBRM targets, which can then provide the additional information the Council determined was necessary for its groundfish-specific management objectives. If there is a need for more finely-tuned monitoring requirements in a particular fishery, the FMP for that fishery can be amended to address those requirements, including increasing monitoring or observer coverage over and above the SBRM levels. For example, the Industry-Funded Monitoring Omnibus Amendment currently under development by the New England and Mid-Atlantic Councils includes measures intended to facilitate the monitoring of incidental catch limits or bycatch events in the Atlantic Herring and the Atlantic Mackerel, Squids, and Butterfish FMPs. NMFS has determined that unless a specific FMP has requirements for such additional monitoring, the SBRM is sufficient for

monitoring bycatch for the purposes of assessing total catch against annual catch limits. The commenters have not provided any evidence that the SBRM would not be sufficient to provide the estimated bycatch component of the total annual catch of a fishery that is used to monitor ACLs. Nor have they submitted any recommendations or alternatives that were not considered.

Comment 6: Oceana and Earthjustice claim the SBRM Omnibus Amendment does not adequately discuss the potential for bias in observer data that could adversely affect estimated bycatch. The commenters' are critical of the 30-percent CV standard, and suggest this level of precision is not sufficient for bycatch estimates. Supporting this contention, both groups cite a technical review of the 2007 SBRM Amendment by Dr. Murdoch McAllister of the University of British Columbia.

Response: NMFS disagrees with Oceana's contention that the amendment does not sufficiently address the issue of potential bias in observer data and the alleged impact of such bias on the accuracy of bycatch estimations. Chapter 5 of the SBRM Omnibus Amendment discusses at length and in detail bias and precision issues as they relate to the SBRM. As discussed in the SBRM Omnibus Amendment and described below, new research and analysis has been conducted since 2007 of potential observer bias and the implications for discard estimation.

Oceana cites the Agency's analysis of at-sea monitoring requirements for the Northeast multispecies sector fishery,⁴ but draws an unsupported conclusion about potential bias in observed trips versus unobserved trips. An analysis contained in that report examined if there were indications of an observer effect on groundfish trips using trawl or gillnet gear that could

⁴ Summary of Analyses Conducted to Determine At-Sea Monitoring Requirements for Multispecies Sectors FY 2013.
www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf

result in either systematic or localized biases, meaning that the observer data used to generate discard estimates may not be representative. This study essentially looked for differences in performance when a vessel carried an observer and when it did not. This analysis found evidence for some difference in fishing behavior between observed and unobserved groundfish trips; however, the analysis does not conclude whether the apparent differences would necessarily result in discard rates on unobserved trips that are different (higher or lower) than on observed trips. If the discard rate is unchanged, then the apparent differences would not affect total discard estimates. Additional analysis included in the report found that even if there is some bias, the discard rate for the groundfish sector trips studied would need to be five to ten times higher on unobserved trips for total catch to exceed the acceptable biological catch. None of the analyses conducted to date suggest behavioral differences on observed versus unobserved trips of this magnitude. In any event, the analysis for the Northeast multispecies sector fishery is not directly relevant for all fisheries covered by the SBRM.

Oceana made similar claims of potential bias about the 2007 SBRM amendment, but the U.S. District Court found that the amendment contained an extensive consideration of bias, precision, and accuracy. Commenters do not add any additional information or analysis that contradicts the finding of the District Court. NMFS, nevertheless, supports continued analysis of potential sources of bias, and the SBRM can be modified in the future to address any shortcomings that are identified.

NMFS disagrees with the commenters' contention that the choice of a 30-percent CV performance standard is inappropriate. The rationale for a 30-percent CV performance standard is explained in Chapters 5 and 6.3 of the SBRM Omnibus Amendment and in the 2004 NMFS technical memorandum "Evaluating bycatch: A national approach to standardized bycatch

monitoring programs” (NMFS-F/SPO-66). The commenters’ cite a technical review of the 2007 SBRM amendment to argue that this level of precision would not be suitable for stock assessments. However, the cited section of the technical review refers to a level of variability in estimates of total catch, while the SBRM is addressing the variability in estimated discards of a species group in a single fishing mode. For most fisheries in the Greater Atlantic Region, discards are a relatively small portion of total catch, and the subdivision by different fishing modes would result in estimates of total discards with much lower total variability. This error on the part of the commenters about relevant scale is a common and understandable confusion about precision. Oceana made a similar argument before the U.S. District Court in its challenge to the 2007 SBRM Amendment. In that case, the Court found that NMFS’s decision to use a 30-percent CV, and the agency’s response to the technical review, was reasonable and did not violate the Magnuson-Stevens Act or any other applicable law. In its most recent comments, Oceana provides no new information or analysis that contradicts the Court’s conclusion.

Comment 7: Oceana and Earthjustice state that the proposed prioritization process is not a sufficient response to the Appeals Court order in *Oceana v. Locke*. Oceana states the proposed funding trigger is not sufficiently distinct from the status quo. In the opinion of the commenters, the amendment does not adequately explain: Why only the named funding lines would be used for SBRM and not others; whether other discretionary sources of money exist; how the agency might handle new funding lines that might be applicable; and what the term “consistent with historic practice” means. Oceana suggests that the amendment must consider other sources of potential funding including other Federal funding sources and development of new industry-funding alternatives. Oceana states that the prioritization of observer coverage should affect catch buffers, and refers to National Standard 1 guidance to argue that any change in the

anticipated precision of discard estimates should be directly tied to the uncertainty buffers around allowable catch.

Response: NMFS disagrees with the commenters' contentions that the prioritization process does not address the Court's finding in *Oceana v. Locke*. Contrary to Oceana's assertion, the prioritization funding trigger places real and significant restrictions on the Agency's discretion to determine the available funding for the SBRM. The four funding lines identified in the amendment were chosen because they represent the primary sources of observer funding in the Greater Atlantic Region, and had been used to fund the SBRM in previous years. By committing the Region to use the funds available in those specific lines to support the SBRM, NMFS is creating a transparent mechanism for determining under what circumstances the SBRM prioritization process would be triggered.

The Agency is not contending that it has no discretion in how to spend any other funding lines, or that there are no other funding lines that may be available to support other monitoring priorities in the Region. NMFS must maintain some flexibility to use appropriated funding to respond to appropriations changes and changes in conditions and priorities within the Region and across the country. To do otherwise would be irresponsible and could be counter to legal requirements and jeopardize the Agency's mission. NMFS acknowledges that Congressional appropriations may change over time. The SBRM Amendment does not speculate about potential future changes in existing or potential future funding lines. The provisions of the SBRM prioritization process may be adjusted to incorporate future changes through an FMP framework action. Framework adjustment development would occur through established Council public participation processes. NMFS has developed annual agency-wide guidance that

further explains how and why specific funding decisions are made for SBRM programs and other observer needs throughout the country.

Oceana expresses confusion regarding the meaning of the phrase “consistent with historic practice” used in the amendment. To provide context, this phrase is intended to reflect that not every dollar allocated to the Region through the specified funding lines will necessarily be converted into observer sea-days. All funding lines to regional offices and science centers are subject to standard overhead deductions that are used to support shared resources and infrastructure that do not receive their own appropriation of funds, such as building rent and maintenance, utilities, shared information technology, etc. In addition, the cost of the SBRM includes more than just observer sea-days. Additional costs include, but are not limited to, shore-side expenses to support the observer program, training of observers, and development of improved sampling procedures. These expenses will necessarily vary from year to year, and it was not practicable to try to enumerate all possible expenses that may be needed to support the SBRM. The intent of specifying that funds will be used “consistent with historic practice” means that these additional costs will be incurred at levels that are consistent with what has occurred in the past such that not all specified funds will be converted to observer sea-days.

NMFS rejects Oceana’s contention that the amendment must include an alternative for the fishing industry to pay for any funding shortfall. Industry-funded monitoring programs are complex and must be carefully tailored to each specific fishery as a management/policy decision in each specific FMP. As stated in Chapter 1 of the SBRM Omnibus Amendment, the SBRM is a methodology to assess the amount and type of bycatch in the fisheries and not a management plan for how each fishery operates. It is not necessary or practicable to develop such programs for all of the fisheries in the Region through this action. The Councils have the flexibility to

consider industry-funded programs, to meet SBRM or other monitoring priorities, on a case by case basis, depending on the needs and circumstances of each fishery.

NMFS disagrees with Oceana's repeated assertions that the anticipated precision of estimated discards must be directly tied to changes in the uncertainty buffers around catch limits. Each data source has a certain degree of uncertainty associated with it. The specific amount of uncertainty can only be estimated and cannot be parsed into specific amounts at different catch levels of different species in different fisheries. NMFS' National Standard 1 guidelines recommend the use of buffers around catch thresholds to account for these various sources of management and scientific uncertainty (74 FR 3178; January 16, 2009). The Councils have adopted control rules and/or make use of scientific and technical expertise so that these buffers address numerous sources of potential uncertainty that may be present in these catch limits into a single value. Each source of uncertainty may vary and the buffers are set conservatively to account for this variability and the complex interplay that may exist between sources of uncertainty. To propose adjusting these buffers to automatically account for changes in the precision estimate for one component of the total catch, in this case discards of a specific species in a specific fishing mode, misunderstands the general nature of these buffers and the complexities they are intended to address. The precision of a discard estimate does not necessarily reflect the magnitude or importance of that estimate. A very small amount of estimated discards could be very imprecise without having a significant impact on total catch. Similarly, if a species is discarded by several fishing modes, a change in precision in one mode may not significantly affect the precision of the total estimated discards for that stock. How the variability in discard estimates impacts the scientific uncertainty of overall catch estimates is outside the scope of this action and is best considered on a case by case basis, through the

Councils' acceptable biological catch (ABC) control rules and Scientific and Statistical Committees. NMFS acknowledges that, in certain cases, the magnitude or importance of estimated discards may be cause for ABC control rules and/or Scientific and Statistical Committees to specifically consider discard estimate precision and underlying uncertainty when recommending an ABC, but not formulaically as the commenter suggests.

NMFS disagrees with Oceana's claim that the SBRM Omnibus Amendment fails to mandate that data be reported in a rational manner useful for fisheries management. As described in Chapter 1 of the SBRM amendment, the SBRM is a general, over-arching methodology for assessing bycatch in all fisheries managed by the New England and Mid-Atlantic Fishery Management Councils to meet the requirements of the Magnuson-Stevens Act. It is not designed as a specific, real-time quota monitoring process. The amendment specifies minimum components to include in the annual discard reports, and anticipates that the format and content of these reports will evolve over time. The 2007 SBRM amendment was very prescriptive of the detailed information to be included in the annual discard reports. However, this resulted in annual discard reports with over 1,000 pages of tables. While these reports contained a lot of information, they were not as useful for management as intended. The revised SBRM Omnibus Amendment calls for annual discard reports to contain more summarized data that could be presented in different ways. We intend to work with the Councils on an ongoing basis to ensure these reports continue to provide the information fishery managers need in a format that is useful in their work. As explained in Chapters 1 and 2 of the Omnibus Amendment, fishing modes are used as the operational unit for assigning observer coverage because it reflects information that is available when a vessel leaves the dock. While data may be collected by fishing mode, the calculated discards can be reported in multiple ways. NMFS

looks forward to working with the Councils to prepare annual discard reports that provide needed information to support their management decisions.

Comment 8: Earthjustice claims the importance filters remove coverage from important fleets, and the SBRM must not prevent NMFS from paying for the government costs of new industry-funded monitoring programs. The commenter also asserts that the implications of the amendment on supplemental observer coverage of mid-water trawl fisheries were first discussed in August 2014, after the Councils had taken final action. The commenter urges the agency to disapprove the amendment and initiate scoping for a new amendment and EIS.

Response: NMFS disagrees with the commenter's contention that the importance filters create a situation that "is not only absurd and irrational, but entirely inconsistent with the needs of the fishery" with regard to monitoring the bycatch of river herring and shad species caught in the midwater trawl fisheries. As described in Chapter 6.2.3 of the amendment, the importance filters are a tool to aid in establishing observer sea day allocations that are more meaningful and efficient at achieving the overall objectives of the SBRM. As the commenter acknowledges, midwater trawl vessels that incidentally catch these species typically retain and land them, and as such, those fish are not bycatch as defined by the Magnuson-Stevens Act. Therefore, such incidental catch is outside of the mandate of the SBRM. Not all monitoring priorities must be part of the SBRM. In cases where a Council determines monitoring of incidental catch of specific species is a management priority, NMFS works with the Council to design and evaluate monitoring options, including at-sea observers or monitors, dockside sampling, electronic monitoring, or other options that best address the needs of the specific fishery.

NMFS acknowledges the commenter's concern that the agency may not be able to fully fund the government's costs associated with a future industry-funded monitoring program. One

of the goals of another initiative, the Industry-Funded Monitoring Omnibus Amendment, currently under development by the Councils is to create a process for prioritizing available appropriated government and industry funds to efficiently provide supplemental monitoring for management goals beyond the SBRM. Currently, the agency may not use private funds to finance the costs of fundamental government obligations in a manner that is not consistent with the Antideficiency Act, Miscellaneous Receipts Statute, and other appropriations laws or rules. In the Industry-Funded Monitoring Omnibus Amendment, the New England and Mid-Atlantic Councils are considering how to prioritize and coordinate government funds necessary for supporting at-sea observers and other monitoring needs consistent with the Councils' recommendations for industry-funded observer programs outside of the SBRM requirements. Development of this process would ensure that when funds are available, they will be used consistent with the priorities regarding observer coverage and monitoring needs established by the Councils. NMFS will continue to work to identify potential funding sources that could be utilized to support the Councils' monitoring priorities.

NMFS disagrees with the commenter's assertion that the implications of how the SBRM impacts at-sea observer coverage in other fisheries were first discussed in August 2014. NMFS staff gave a special presentation about the funding of the Northeast Fisheries Observer Program at both the New England and Mid-Atlantic Council meetings in April 2014. These presentations highlighted the sources of funding and potential effect of the proposed SBRM funding trigger on available SBRM coverage and other monitoring programs previously funded by the effected funding lines. This message was then reiterated during the presentation of the SBRM Omnibus Amendment at the same meetings, before the Councils voted to take final action on the amendment.

Comment 9: The Center for Biological Diversity, an environmental group, submitted a letter focusing on the potential impact of the SBRM on endangered species. The commenter suggests that the allocation of observers should be focused on the conservation status of potential bycatch species, particularly those that are overfished, undergoing overfishing, or have been identified as endangered, threatened, or species of concern. The group also asserted that the amendment does not adequately consider potential adverse effects on endangered species.

Response: NMFS disagrees with the commenter's assertion that the SBRM should be driven primarily by the conservation status of the potential bycatch species. Section 303(a)(11) of the Magnuson-Stevens Act requires that each FMP "establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery" regardless of the conservation status of the species caught in the fishery. As stated in Chapter 1.3 of amendment, the primary purpose of bycatch reporting and monitoring is to collect information that can be used reliably as the basis for making sound fisheries management decisions for all managed species in the Greater Atlantic Region, including stock assessments and annual catch accounting. Figure 1 in Appendix H of the SBRM Omnibus Amendment illustrates that beyond a certain point, increased observer coverage provides diminishing returns as far as improved precision of estimated discards. As a result, prioritizing observer coverage by conservation status could risk sacrificing the precision of bycatch estimates for several species to achieve a marginal improvement in one, which is unlikely to meet the stated objectives of this action.

NMFS disagrees with the commenter's contention that the SBRM Omnibus Amendment does not adequately consider adverse effects to endangered species. As discussed in Chapter 5 of the amendment, the SBRM applies the 30-percent CV performance standard to species afforded protection under the Endangered Species Act, as it does for species managed under a

FMP. This has been the case since the implementation of the 2007 SBRM Amendment. Since that time, the agency has continued to effectively use discard estimates for these species for management purposes, including monitoring incidental take limits, and there is no information indicating these estimates are inadequate. The SBRM Omnibus Amendment is primarily administrative in nature and is not expected to result in any changes in fishing effort or behavior, fishing gears used, or areas fished, and therefore will not adversely affect endangered and threatened species in any manner not considered in prior consultations.

Comment 10: One commercial fisherman expressed frustration with how observer coverage and at-sea monitors are allocated across the groundfish fleet. The commenter suggested assigning observers based on the amount of bycatch rather than the estimated variance in discards. The commenter was also very concerned about the potential cost to vessels of industry-funded monitoring.

Response: As described in Chapter 5 of the SBRM Omnibus Amendment, the target observer coverage rates are calculated based on the variance of discards (i.e., the CV performance standard) rather than on total amount of discards from any one fishing mode. This approach is designed to provide a suitable level of precision in discard estimates to meet the requirements of the Magnuson-Stevens Act. The SBRM focuses on providing a statistically rigorous sampling of fishing activity, which will provide a more precise estimate of total discards, rather than a direct measurement or census of discards. Thus, it is intended to provide a better measurement of overall discards, rather than trying to directly observe a high volume of discards that might lead to a less precise estimate of total discards when unobserved trips are factored in. The comment regarding the potential burden that paying for at-sea monitors would place on the groundfish industry is addressed under Comment 2, above.

Comment 11: One commercial fisherman expressed concerns that the proposed funding trigger would be too restrictive on the use of certain observer funds and would prevent funds from being used to cover the groundfish industry costs for at-sea monitors as it has in the past.

Response: NMFS agrees with this individual's observation. Funds previously used to cover groundfish at-sea monitors may be fully committed to the SBRM process by the amendment's measures to the extent that SBRM funding amounts are insufficient to realize the level of observer coverage estimated to achieve the 30-percent CV performance standard. Additional detail on this comment is addressed in the response to Comment 2, above.

Comment 12: One member of the public wrote in support of the proposed 45-day payment period for observer services to the scallop fishing fleet, and suggested that such a payment period be specified in any future action to develop industry-funded observer programs. The commenter also suggested that the proposed rule at § 648.11(h)(5)(vii)(A) incorrectly states that an observer has 24 hours for electronic submission of observer data after a trip has landed, and that the correct time should be 48 hours.

Response: This comment refers to one of three minor modifications to the regulations in the proposed rule that are not part of the SBRM Omnibus Amendment, but were proposed under authority granted the Secretary under section 305(d) of the Magnuson-Stevens Act to ensure that FMPs are implemented as intended and consistent with the requirements of the Magnuson-Stevens Act. NMFS agrees that a clear payment deadline is valuable for both the observer service providers and the vessel operators who are contracting observer services.

The requirement to submit electronic observer data within 24 hours reflects the current regulations. NMFS acknowledges that current practice is to allow 48 hours for electronic submission of observer data. The proposed rule did not specifically propose addressing this

inconsistency, and as a result there was no opportunity for public comment. Therefore, NMFS is not changing this regulation in this rule. There may be other areas within this section of the regulations where current practice has evolved away from the specific provisions in the regulations. NMFS may address these inconsistencies in a future rulemaking.

Comment 13: A letter from The Nature Conservancy expressed support for improving fishery monitoring systems and cited the benefits of accurate and reliable data. The commenter urged NMFS to clarify the agency's intention to take steps necessary to implement additional tools for collecting timely and accurate fishery-related data, including the use of electronic monitoring. In particular, the commenter urged the agency to ensure that the SBRM support, and not hinder, the earliest possible implementation of electronic monitoring. The commenter also expressed support for the SBRM review and reporting process, and requested that the triennial review include a broader set of stakeholders beyond NMFS and the Councils.

Response: NMFS acknowledges that the funding-related prioritization trigger may require some funding sources that have previously been used to support development of electronic monitoring to be used exclusively for the SBRM. This may delay implementation of electronic monitoring in the Region. The commenter cited the recent adoption of electronic monitoring requirements to monitor bluefin tuna bycatch in the pelagic longline fishery under the Consolidated Atlantic Highly Migratory Species FMP as evidence that electronic monitoring is ready to meet the bycatch monitoring goals of the SBRM. NMFS is very supportive of the new electronic monitoring program to monitor bycatch of bluefin tuna in the pelagic longline fishery. Lessons learned in the implementation of the bluefin tuna program should help inform other electronic monitoring programs in the future. However, a technology that is suitable for identification of bycatch of a distinctive species by a specific gear type, such as bluefin tuna in

the pelagic longline fishery, may not yet be as suitable or affordable for monitoring more complex bycatch situations covered by the SBRM, such as differentiating flounder species in a multispecies trawl fishery, or providing length and weight data (all of which would be essential for electronic monitoring to effectively replace observers under the SBRM). Electronic monitoring is a technological tool that may be used to serve monitoring purposes that may differ between fisheries. The suitability and manner of using this tool for a particular purpose must be considered in the context of each proposed program. NMFS supports the continued development of electronic monitoring and will continue to evaluate its applicability as a component of a comprehensive SBRM and other coverage purposes.

The team that conducted the 3-year review of the SBRM in 2011 included staff from the Northeast Fisheries Science Center, the Greater Atlantic Regional Fisheries Office, the New England and Mid-Atlantic Fishery Management Councils, and the Atlantic States Marine Fisheries Commission. Because much of the data analyzed as part of the 3-year review are confidential under the Magnuson-Stevens Act, the team was limited to individuals authorized to access such information. The annual discard reports as well as the final 3-year review report present information in a format consistent with data confidentiality requirements and are all publically available. NMFS and the Councils will consider how additional stakeholders might be included in the next review in a way that could allow their input without compromising the confidentiality of catch and discard data.

Comment 14: The Marine Mammal Commission submitted a letter requesting NMFS include additional information in the final rule about whether the SBRM has implications for observer programs under the Marine Mammal Protection Act (MMPA). In addition, the letter noted particular support for the proposed use of a non-discretionary formulaic process for

prioritizing available observer sea-days, and the provision to facilitate the future development of an industry-funded observer program through a framework adjustment.

Response: NMFS appreciates the commenter's support for the use of a non-discretionary formulaic process for prioritizing available observer sea-days, and the provision to facilitate the future development of an industry-funded observer program through the FMP's framework adjustment process. Observer programs explicitly funded to support the MMPA are not affected by this amendment. NMFS receives dedicated funding for observers under the MMPA, which is a separate funding allocation from the SBRM program. Because the funding for these MMPA observers is outside of the funding lines dedicated to the SBRM, the allocation of MMPA observers is not directly subject to the observer allocation process or prioritization process described in the SBRM Omnibus Amendment. The MMPA observers are allocated across fisheries based on the estimated likelihood of marine mammal interactions. At-sea observers allocated under the SBRM actually provide additional marine mammal observer coverage as they record and report any interactions with marine mammals that occur on observed fishing trips. Likewise, at-sea monitors in the groundfish sector program record any interactions they witness. Similarly, in the absence of a marine mammal interaction, MMPA observers record information about the trip and observed bycatch that contributes to our overall estimation of bycatch in Greater Atlantic fisheries. However, if a marine mammal is present, these observers are required to focus their attention on that marine mammal interaction, and monitoring of other bycatch becomes a secondary priority. For additional information about how marine mammal interactions are monitored, please see the Greater Atlantic Region's Marine Mammal Program website at: www.greateratlantic.fisheries.noaa.gov/Protected/mmp/.

Comment 15: The comments submitted by Environmental Defense Fund, an environmental organization, expressed concerns about the impact of the proposed SBRM on the continued development and implementation of electronic monitoring in the Region. The commenter expressed concern that the amendment should have included electronic monitoring as an explicit component of the SBRM. The group asserts that 100-percent electronic monitoring would reduce uncertainty in catch data and improve stock assessments, and that electronic monitoring could provide a lower sea-day cost than current at-sea observers. The group is critical that the proposed funding trigger is not properly explained and would prevent funds from being available for electronic monitoring or to cover the government costs associated with any future industry-funded monitoring programs.

Response: The responses above to Comment 3, Comment 4, and Comment 9 address many of the points raised by the commenter. NMFS does not agree with the commenter's characterization of the potential cost savings with electronic monitoring at this time. The commenter promotes the potential for a lower cost per sea-day with electronic monitoring than with at-sea observers, but also advocates for 100-percent electronic monitoring on every fishing trip. This is a substantial increase in coverage rate when compared to the current SBRM using at-sea observers. The affordability of electronic monitoring has yet to be determined. Electronic monitoring costs will be determined largely by the purpose and scope of particular electronic monitoring coverage and the available technology to meet those needs. Even at a potentially lower cost per day, the increase in coverage to 100 percent of trips would likely result in a program that is significantly more expensive than the SBRM is currently. This does not take into account that electronic monitoring is not yet considered robust enough to replace observers for bycatch monitoring in some gears types or for identifying all bycatch to the species level. In

addition, some amount of at-sea observer coverage is likely to still be required to collect biological samples, which would further increase the costs. NMFS will continue to support development of electronic monitoring as a potential tool where it is fitting and appropriate.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that the SBRM Omnibus Amendment is necessary for the conservation and management of Greater Atlantic fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: June 17, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.11, add paragraph (g)(5)(iii), and revise paragraphs (h)(1), (h)(3)(iv), (h)(3)(vi), (h)(3)(viii), (h)(3)(ix), (h)(4), (h)(5), (h)(7) introductory text, (i)(1), (i)(2), (i)(3)(ii) and (v), (i)(4), and (i)(5) to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(g) * * *

(5) * * *

(iii) Owners of scallop vessels shall pay observer service providers for observer services within 45 days of the end of a fishing trip on which an observer deployed.

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(h) *Observer service provider approval and responsibilities*—(1) *General.* An entity seeking to provide observer services must apply for and obtain approval from NMFS following submission of a complete application. A list of approved observer service providers shall be distributed to vessel owners and shall be posted on the NMFS/NEFOP website at:

www.nefsc.noaa.gov/femad/fsb/.

* * * * *

(3) * * *

(iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal conviction(s), Federal contract(s) they have had and the performance rating they received on the contracts, and previous decertification action(s) while working as an observer or observer service provider.

* * * * *

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a fishery observer services provider as set out under paragraph (h)(5) of this section, and the arrangements to be used.

* * * * *

(viii) Proof that its observers, whether contracted or employed by the service provider, are compensated with salaries that meet or exceed the U.S. Department of Labor (DOL) guidelines for observers. Observers shall be compensated as Fair Labor Standards Act (FLSA) non-exempt employees. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

(ix) The names of its fully equipped, NMFS/NEFOP certified, observers on staff or a list of its training candidates (with resumes) and a request for an appropriate NMFS/NEFOP Observer Training class. The NEFOP training has a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will be delayed until further requests make up the full training class size.

* * * * *

(4) *Application evaluation.* (i) NMFS shall review and evaluate each application submitted under paragraph (h)(3) of this section. Issuance of approval as an observer provider

shall be based on completeness of the application, and a determination by NMFS of the applicant's ability to perform the duties and responsibilities of a fishery observer service provider, as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 business days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on the NMFS/NEFOP website specified in paragraph (h)(1) of this section, and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or the evaluation criteria are not met. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved observer service providers.

(5) *Responsibilities of observer service providers.* (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for

deployment in a fishery when contacted and contracted by the owner, operator, or vessel manager of a fishing vessel, unless the observer service provider refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a fishing vessel or to attend an appropriate NMFS/NEFOP observer training class;

(C) The required observer equipment, in accordance with equipment requirements listed on the NMFS/NEFOP website specified in paragraph (h)(1) of this section, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order, such as a mobile phone, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer's personal mobile phone, or other device, for communications made in support of, or necessary for, the observer's duties.

(iii) *Observer deployment logistics.* Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must be accessible 24 hours per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests.

Observer service providers approved under paragraph (h) of this section are required to report

observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the appropriate fishery.

(iv) *Observer deployment limitations.* (A) A candidate observer's first four deployments and the resulting data shall be immediately edited and approved after each trip by NMFS/NEFOP prior to any further deployments by that observer. If data quality is considered acceptable, the observer would be certified.

(B) Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for more than two consecutive multi-day trips, and not more than twice in any given month for multi-day deployments.

(v) *Communications with observers.* An observer service provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) *Observer training requirements.* The following information must be submitted to NMFS/NEFOP at least 7 days prior to the beginning of the proposed training class: A list of observer candidates; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the end of a NMFS/NEFOP Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/NEFOP minimum eligibility standards for observers as described on the NMFS/NEFOP website.

(vii) *Reports--(A) Observer deployment reports.* The observer service provider must report to NMFS/NEFOP when, where, to whom, and to what fishery (including Open Area or

Access Area for sea scallop trips) an observer has been deployed, within 24 hours of the observer's departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 24 hours of landing. OBSCON data are to be submitted electronically or by other means specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 4 business days of the trip landing.

(B) *Safety refusals.* The observer service provider must report to NMFS any trip that has been refused due to safety issues, e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal or to meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hours of the refusal.

(C) *Biological samples.* The observer service provider must ensure that biological samples, including whole marine mammals, sea turtles, and sea birds, are stored/handled properly and transported to NMFS within 7 days of landing.

(D) *Observer debriefing.* The observer service provider must ensure that the observer remains available to NMFS, either in-person or via phone, at NMFS' discretion, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any observed trip. If requested by NMFS, an observer that is at sea during the 2-week period must contact NMFS upon his or her return.

(E) *Observer availability report.* The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers by 5 p.m., Eastern Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) *Other reports.* The observer service provider must report possible observer harassment, discrimination, concerns about vessel safety or marine casualty, or observer illness or injury; and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior, to NMFS/NEFOP within 24 hours of the event or within 24 hours of learning of the event.

(G) *Observer status report.* The observer service provider must provide NMFS/NEFOP with an updated list of contact information for all observers that includes the observer identification number, observer's name, mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer is “in service,” indicating when the observer has requested leave and/or is not currently working for an industry funded program.

(H) *Vessel contract.* The observer service provider must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services.

(I) *Observer contract.* The observer service provider must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and specific observers.

(J) *Additional information.* The observer service provider must submit to NMFS/NEFOP, if requested, copies of any information developed and/or used by the observer provider and distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

(viii) *Refusal to deploy an observer.* (A) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider does not have an available observer within 48 hours of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting fishing vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at § 600.746 of this chapter.

(C) The observer service provider may refuse to deploy an observer on a fishing vessel that is otherwise eligible to carry an observer for any other reason, including failure to pay for previous observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

* * * * *

(7) *Removal of observer service provider from the list of approved observer service providers.* An observer service provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a

pending removal is received by NMFS, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or if no rebuttal is submitted, shall be the final decision of NMFS and the Department of Commerce. Removal from the list of approved observer service providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any fishing trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

* * * * *

(i) *Observer certification.* (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the National Observer Program website:

www.nmfs.noaa.gov/op/pds/categories/science_and_technology.html.

(2) *Observer training.* In order to be deployed on any fishing vessel, a candidate observer must have passed an appropriate NMFS/NEFOP Observer Training course. If a

candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. Observer training shall include an observer training trip, as part of the observer's training, aboard a fishing vessel with a trainer. A candidate observer's first four deployments and the resulting data shall be immediately edited and approved after each trip by NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer would be certified.

(3) * * *

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board fishing vessels, pursuant to standards established by NMFS. Such standards are available from NMFS/NEFOP website specified in paragraph (h)(1) of this section and shall be provided to each approved observer service provider;

* * * * *

(v) Accurately record their sampling data, write complete reports, and report accurately any observations relevant to conservation of marine resources or their environment.

(4) *Probation and decertification.* NMFS may review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the NMFS/NEFOP website specified in paragraph (h)(1) of this section.

(5) *Issuance of decertification.* Upon determination that decertification is warranted under paragraph (i)(4) of this section, NMFS shall issue a written decision to decertify the observer to the observer and approved observer service providers via certified mail at the observer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken.

Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of NMFS and the Department of Commerce and may not be appealed.

* * * * *

3. Add § 648.18 to subpart A to read as follows:

§ 648.18 Standardized bycatch reporting methodology.

NMFS shall comply with the Standardized Bycatch Reporting Methodology (SBRM) provisions established in the following fishery management plans by the *Standardized Bycatch Reporting Methodology: An Omnibus Amendment to the Fishery Management Plans of the Mid-Atlantic and New England Regional Fishery Management Councils*, completed March 2015, also known as the SBRM Omnibus Amendment, by the New England Fishery Management Council, Mid-Atlantic Fishery Management Council, National Marine Fisheries Service Greater Atlantic Regional Fisheries Office, and National Marine Fisheries Service Northeast Fisheries Science Center: Atlantic Bluefish; Atlantic Mackerel, Squid, and Butterfish; Atlantic Sea Scallop; Atlantic Surfclam and Ocean Quahog; Atlantic Herring; Atlantic Salmon; Deep-Sea Red Crab; Monkfish; Northeast Multispecies; Northeast Skate Complex; Spiny Dogfish; Summer Flounder, Scup, and Black Sea Bass; and Tilefish. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the SBRM Omnibus Amendment from the Greater Atlantic Regional Fisheries Office (www.greateratlantic.fisheries.noaa.gov, 978-281-9300). You may inspect a copy at the Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930 or at the National Archives and Records Administration (NARA). For information on the

availability of this material at NARA, call 202-741-6030, or go to:

www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

4. In § 648.22, add paragraph (c)(13) to read as follows:

§ 648.22 Atlantic mackerel, squid, and butterfish specifications.

* * * * *

(c) * * *

(13) Changes, as appropriate, to the SBRM, including the coefficient of variation (CV) based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

* * * * *

5. In § 648.25, revise paragraph (a)(1) to read as follows:

§ 648.25 Atlantic Mackerel, squid, and butterfish framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-

ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system, including commercial quota allocation procedure and possible quota set-asides to mitigate bycatch; recreational harvest limit; annual specification quota setting process; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; any other management measures currently included in the FMP; set aside quota for scientific research; regional management; process for inseason adjustment to the annual specification; mortality caps for river herring and shad species; time/area management for river herring and shad species; and provisions for river herring and shad incidental catch avoidance program, including adjustments to the mechanism and process for tracking fleet activity, reporting incidental catch events, compiling data, and notifying the fleet of changes to the area(s); the definition/duration of ‘test tows,’ if test tows would be utilized to determine the extent of river herring incidental catch in a particular area(s); the threshold for river herring incidental catch that would trigger the need for vessels to be alerted and move out of the area(s); the distance that vessels would be required to move from the area(s); and the time that vessels would be required to remain out of the area(s). Measures contained within this list

that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require amendment of the FMP instead of a framework adjustment.

* * * * *

6. In § 648.41, revise paragraph (a) to read as follows:

§ 648.41 Framework specifications.

(a) *Within season management action.* The New England Fishery Management Council (NEFMC) may, at any time, initiate action to implement, add to or adjust Atlantic salmon management measures to:

(1) Allow for Atlantic salmon aquaculture projects in the EEZ, provided such an action is consistent with the goals and objectives of the Atlantic Salmon FMP; and

(2) Make changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

* * * * *

7. In § 648.55, revise paragraphs (f)(39) and (40), and add paragraph (f)(41) to read as follows:

§ 648.55 Framework adjustments to management measures.

* * * * *

(f) * * *

(39) Adjusting EFH closed area management boundaries or other associated measures;

(40) Changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set-aside programs; and

(41) Any other management measures currently included in the FMP.

* * * * *

8. In § 648.79, revise paragraph (a)(1) to read as follows:

§ 648.79 Surfclam and ocean quahog framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; the overfishing definition (both the threshold and target levels); description and identification of EFH (and fishing gear management measures that impact EFH); habitat areas of particular concern; set-aside quota for scientific research; VMS; OY range; suspension or adjustment of the surfclam minimum size limit; and changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-

funded observers or observer set aside programs. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

* * * * *

9. In § 648.90, revise paragraphs (a)(2)(i), (a)(2)(iii), (b)(1)(ii), and (c)(1)(i) and (ii) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(2) *Biennial review.* (i) The NE multispecies PDT shall meet on or before September 30 every other year to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop ACLs for the upcoming fishing year(s) as described in paragraph (a)(4) of this section and develop options for consideration by the Council if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or other measures necessary to rebuild overfished stocks and achieve the FMP goals and objectives, including changes to the SBRM.

* * * * *

(iii) Based on this review, the PDT shall recommend ACLs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of

different user groups or fleet sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: ACLs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 12 regulated species and ocean pout if able to be determined; identifying and distributing ACLs and other sub-components of the ACLs among various segments of the fishery; AMs; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; describing and identifying EFH; fishing gear management measures to protect EFH; designating habitat areas of particular concern within EFH; and changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific ACLs, area management boundaries, and adoption of area-specific management measures; sector allocation requirements and specifications, including the establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation, and the calculation of PSCs; sector administration provisions, including at-sea and dockside monitoring measures; sector reporting requirements; state-operated permit bank administrative provisions; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative

measures; additional uses for Regular B DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; adjustments to the Handgear A or B permits; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; and any other measures currently included in the FMP.

* * * * *

(b) * * *

(1) * * *

(ii) The Whiting PDT, after reviewing the available information on the status of the stock and the fishery, may recommend to the Council any measures necessary to assure that the specifications will not be exceeded; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; as well as changes to the appropriate specifications.

* * * * *

(c) * * *

(1) * * *

(i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes; effort monitoring; data reporting; possession limits; gear restrictions; closed areas; permitting restrictions; crew limits; minimum fish sizes; onboard observers; minimum hook size and hook style; the use of crucifer in the hook-gear fishery; sector requirements; recreational fishing measures; area closures and other appropriate measures to mitigate marine mammal entanglements and interactions; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; and any other management measures currently included in the FMP.

(ii) The Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable); modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies; adjustments to whiting stock boundaries for management purposes; adjustments for fisheries exempted from minimum mesh

requirements to fish for small-mesh NE multispecies (if applicable); season adjustments; declarations; participation requirements for any of the Gulf of Maine/Georges Bank small-mesh multispecies exemption areas; OFL and ABC values; ACL, TAL, or TAL allocations, including the proportions used to allocate by season or area; small-mesh multispecies possession limits, including in-season AM possession limits; changes to reporting requirements and methods to monitor the fishery; and biological reference points, including selected reference time series, survey strata used to calculate biomass, and the selected survey for status determination; and changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

* * * * *

10. In § 648.96, revise paragraph (a)(3)(ii) to read as follows:

§ 648.96 FMP review, specification, and framework adjustment process.

(a) * * *

(3) * * *

(ii) The range of options developed by the Councils may include any of the management measures in the Monkfish FMP, including, but not limited to: ACTs; closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver-to-monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; measures to minimize the impact of the monkfish fishery on protected species; gear requirements or restrictions that minimize bycatch or bycatch mortality; transferable DAS programs; changes to the SBRM, including the CV-based

performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; changes to the Monkfish Research Set-Aside Program; and other frameworkable measures included in §§ 648.55 and 648.90.

* * * * *

11. In § 648.102, add paragraph (a)(10) to read as follows:

§ 648.102 Summer flounder specifications.

(a) * * *

(10) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

* * * * *

12. In § 648.110, revise paragraph (a)(1) to read as follows:

§ 648.110 Summer flounder framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule

levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limit; specification quota setting process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

* * * * *

13. In § 648.122, add paragraph (a)(13) to read as follows:

§ 648.122 Scup specifications.

(a) * * *

(13) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the

process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

* * * * *

14. In § 648.130, revise paragraph (a)(1) to read as follows:

§ 648.130 Scup framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rules; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear restricted areas; gear requirements or prohibitions; permitting restrictions; recreational possession limits; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limits; annual specification quota setting process; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits;

changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research.

* * * * *

15. In § 648.142, add paragraph (a)(12) to read as follows:

§ 648.142 Black sea bass specifications.

(a) * * *

(12) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

* * * * *

16. In § 648.162, add paragraph (a)(9) to read as follows:

§ 648.162 Bluefish specifications.

(a) * * *

(9) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; and

* * * * *

17. In § 648.167, revise paragraph (a)(1) to read as follows:

§ 648.167 Bluefish framework adjustment to management measures.

(a) * * *

(1) *Adjustment process.* After a management action has been initiated, the MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC shall provide the public with advance notice of the availability of both the proposals and the analysis and the opportunity to comment on them prior to and at the second MAFMC meeting. The MAFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational season; closed areas; commercial season; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; and any other management measures currently included in the FMP. Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

* * * * *

18. In § 648.200, revise the introductory text of paragraph (b) to read as follows:

§ 648.200 Specifications.

* * * * *

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

* * * * *

19. In § 648.206, add paragraph (b)(29) to read as follows:

§ 648.206 Framework provisions.

* * * * *

(b) * * *

(29) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs;

* * * * *

20. In § 648.232, add paragraph (a)(6) to read as follows:

§ 648.232 Spiny dogfish specifications.

(a) * * *

(6) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for

prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs;

* * * * *

21. In § 648.239, revise paragraph (a)(1) to read as follows:

§ 648.239 Spiny dogfish framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* After the Councils initiate a management action, they shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis for comment prior to, and at, the second Council meeting. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear requirements, restrictions, or prohibitions (including, but not limited to, mesh size restrictions and net limits); regional gear restrictions; permitting restrictions, and reporting requirements; recreational fishery measures (including possession and size limits and season and area restrictions); commercial season and area restrictions; commercial trip or possession limits; fin weight to spiny dogfish landing weight restrictions; onboard observer requirements; commercial quota system (including commercial quota allocation procedures and possible quota set-asides to mitigate bycatch, conduct scientific research, or for other purposes); recreational harvest limit; annual quota specification process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat; description and identification of habitat areas of particular concern; overfishing

definition and related thresholds and targets; regional season restrictions (including option to split seasons); restrictions on vessel size (length and GRT) or shaft horsepower; target quotas; measures to mitigate marine mammal entanglements and interactions; regional management; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; any other management measures currently included in the Spiny Dogfish FMP; and measures to regulate aquaculture projects. Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

* * * * *

22. In § 648.260, revise paragraph (a)(1) to read as follows:

§ 648.260 Specifications.

(a) * * *

(1) The Red Crab PDT shall meet at least once annually during the intervening years between Stock Assessment and Fishery Evaluation (SAFE) Reports, described in paragraph (b) of this section, to review the status of the stock and the fishery. Based on such review, the PDT shall provide a report to the Council on any changes or new information about the red crab stock and/or fishery, and it shall recommend whether the specifications for the upcoming year(s) need to be modified. At a minimum, this review shall include a review of at least the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea

sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information.

* * * * *

23. In § 648.261, revise paragraph (a)(1) to read as follows:

§ 648.261 Framework adjustment process.

(a) * * *

(1) In response to an annual review of the status of the fishery or the resource by the Red Crab PDT, or at any other time, the Council may recommend adjustments to any of the measures proposed by the Red Crab FMP, including the SBRM. The Red Crab Oversight Committee may request that the Council initiate a framework adjustment. Framework adjustments shall require one initial meeting (the agenda must include notification of the impending proposal for a framework adjustment) and one final Council meeting. After a management action has been initiated, the Council shall develop and analyze appropriate management actions within the scope identified below. The Council may refer the proposed adjustments to the Red Crab Committee for further deliberation and review. Upon receiving the recommendations of the Oversight Committee, the Council shall publish notice of its intent to take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. After receiving public comment, the Council must take action (to approve, modify, disapprove, or table) on the recommendation at the Council meeting following the meeting at which it first received the recommendations. Documentation and analyses for the framework adjustment shall be available at least 2 weeks before the final meeting.

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24. In § 648.292, revise paragraph (a) to read as follows:

§ 648.292 Tilefish specifications.

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(a) *Annual specification process.* The Tilefish Monitoring Committee shall review the ABC recommendation of the SSC, tilefish landings and discards information, and any other relevant available data to determine if the ACL, ACT, or total allowable landings (TAL) requires modification to respond to any changes to the stock's biological reference points or to ensure that the rebuilding schedule is maintained. The Monitoring Committee will consider whether any additional management measures or revisions to existing measures are necessary to ensure that the TAL will not be exceeded, including changes, as appropriate, to the SBRM. Based on that review, the Monitoring Committee will recommend ACL, ACT, and TAL to the Tilefish Committee of the MAFMC. Based on these recommendations and any public comment received, the Tilefish Committee shall recommend to the MAFMC the appropriate ACL, ACT, TAL, and other management measures for a single fishing year or up to 3 years. The MAFMC shall review these recommendations and any public comments received, and recommend to the Regional Administrator, at least 120 days prior to the beginning of the next fishing year, the appropriate ACL, ACT, TAL, the percentage of TAL allocated to research quota, and any management measures to ensure that the TAL will not be exceeded, for the next fishing year, or up to 3 fishing years. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations, and after such review, NMFS will publish a proposed rule in the Federal Register specifying the annual ACL, ACT, TAL and any management measures to ensure that the TAL will not be exceeded for the upcoming fishing year or years. After considering public comments, NMFS will publish a final rule in the Federal

Register to implement the ACL, ACT, TAL and any management measures. The previous year's specifications will remain effective unless revised through the specification process and/or the research quota process described in paragraph (e) of this section. NMFS will issue notification in the Federal Register if the previous year's specifications will not be changed.

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25. In § 648.299, add paragraph (a)(1)(xviii) to read as follows:

§ 648.299 Tilefish framework specifications.

(a) * * *

(1) * * *

(xviii) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs;

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26. In § 648.320, revise paragraphs (a)(5)(ii) and (iii), and add paragraph (a)(5)(iv) to read as follows:

§ 648.320 Skate FMP review and monitoring.

(a) * * *

(5) * * *

(ii) In-season possession limit triggers for the wing and/or bait fisheries;

(iii) Required adjustments to in-season possession limit trigger percentages or the ACL-ACT buffer, based on the accountability measures specified at § 648.323; and

(iv) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

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27. In § 648.321, revise paragraphs (b)(22) and (23), and add paragraph (b)(24) to read as follows:

§ 648.321 Framework adjustment process.

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(b) * * *

(22) Reduction of the baseline 25-percent ACL-ACT buffer to less than 25 percent;

(23) Changes to catch monitoring procedures; and

(24) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

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